The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts the amendment to §39.651, *with change* to the proposed text as published in the December 25, 2015, issue of the *Texas Register* (40 TexReg 9487).

Background and Summary of the Factual Basis for the Adopted Rule

This rulemaking implements House Bill (HB) 655, 84th Texas Legislature, 2015, addressing the commission's regulation of aquifer storage and recovery (ASR) projects in Texas. ASR involves the use of one or more injection wells for the purpose of placing a water supply into a subsurface geologic formation, or aquifer, for storage so that the water may be subsequently recovered and used by the project operator. The adopted amendment to §39.651 implements the requirements of HB 655 for providing public notice for an individual injection well permit application for an ASR injection well. There are no requirements for providing individual public notice on ASR injection wells that are authorized by rule.

In corresponding rulemaking published in this issue of the *Texas Register*, the commission also adopts revisions to 30 TAC Chapter 295, Water Rights, Procedural; 30 TAC Chapter 297, Water Rights, Substantive; and 30 TAC Chapter 331, Underground Injection Control.

Section Discussion

The commission adopts the amendment of §39.651 to implement the public notice requirements in Texas Water Code (TWC), §27.153(d). Section 39.651(d)(6) is amended to add "Class V" to establish a 30-day comment period for Class V injection well permit applications in the requirements for the Notice of Application and Preliminary Decision. In response to comments, §39.651(h) is added to address the specific notice of application requirements for an application for an individual permit for an injection well for an ASR project as required in HB 655 and as required to maintain requirements for an authorized Underground Injection Control (UIC) program under the federal Safe Drinking Water Act.

Final Regulatory Impact Analysis Determination

The commission reviewed the adopted rulemaking action in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the action is not subject to Texas Government Code, §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in the statute. "Major environmental rule" means a rule, the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The adopted action implements legislative requirements in

HB 655, which revises the requirements for the commission's regulation of injection wells associated with ASR projects. The adoption does not meet the definition of "major environmental rule" because the rulemaking does not affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment or public health and safety of the state or a sector of the state. The adopted rule implements public notice requirements for certain injection well permit applications associated with ASR projects, consistent with the requirements of HB 655 and Texas statutes.

Furthermore, the adopted rule does not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a). The adopted rule does not exceed a standard set by federal law, because the adopted rule is consistent with applicable federal standards regarding public notice required for injection well permit applications. The adopted rule does not exceed an express requirement of state law because it is consistent with the express requirements of HB 655 and TWC, Chapter 27, Subchapter G. The adopted rule does not exceed requirements set out in the commission's UIC program authorized for the state of Texas under the federal Safe Drinking Water Act. The rulemaking is not adopted under the general powers of the agency and is adopted under the express requirements of HB 655 and TWC, §§27.019, 27.153, and 27.154.

The commission invited public comment regarding the Draft Regulatory Impact

Analysis Determination during the public comment period. The commission did receive comments on the Draft Regulatory Impact Analysis Determination from Benbrook Water Authority (Benbrook) and Prairielands Groundwater Conservation District (Prairielands GWCD).

Comment

Benbrook and Prairielands GWCD refer to Texas Government Code, §2001.0225 to claim that state regulations may exceed federal requirements as long as the additional requirements are authorized by state law. Prairielands GWCD contends that the amendments to §39.651 exceed federal requirements and the notice requirements in HB 655.

Response

The commission stands by its determination that the amendment to public notice requirements in §39.651 is not a "major environmental rule" as defined in Texas Government Code, §2001.0225. The public notice requirements are procedural rules and do not protect the environment or reduce risks to human health from environmental exposure. A state agency is required to perform a regulatory analysis of rulemaking under Texas Government Code, §2001.0225 only for a major environmental rule. Further, under Texas Government Code, §2001.0225(a)(1), the state agency

is required to perform the regulatory analysis of a major environmental rule with the result to exceed a standard set by federal law, unless the rule is specifically required by state law. However, as discussed in the Response to Comments section of this preamble, the adopted rule has been revised to include the public notice requirements for an application for an individual Class V injection well permit in adopted §39.651(h) consistent with the requirements of HB 655 and requirements to maintain an authorized UIC program under the federal Safe Drinking Water Act.

Comment

Benbrook questions statements from the commission's draft regulatory impact analysis that the proposed rule regarding public notice requirements do not exceed a standard set by federal law. Benbrook contends that the proposed rule appears to exceed federal standards as set out in 40 Code of Federal Regulations (CFR) §124.10. Prairielands GWCD contends that the amendments to §39.651 exceed federal requirements and the notice requirements in HB 655.

Response

The amendment to §39.651 establishes requirements for providing public notice for individual permit applications to authorize Class V injection wells associated with ASR projects. These include requirements for the

method of providing notice and the designated recipients of the notice. These provisions do not exceed any numerical or measured standard set by federal law because they are procedural requirements and not environmental protection standards. The permitting requirements for a state UIC program, including the provision of public notice, are identified in 40 CFR §145.11. TCEQ is not required to implement identical provisions to the United States Environmental Protection Agency's public notice requirements in 40 CFR Part 124. The public notice requirements in adopted §39.651(h) for applications for individual Class V injection well permits for ASR projects are consistent with the public notice requirements in HB 655 and requirements to maintain an authorized UIC program under the federal Safe Drinking Water Act. Therefore, the public notice requirements in §39.651 do not exceed a standard established by federal law and are specifically required by state law as provided in Texas Government Code, §2001.0225(a)(1).

Takings Impact Assessment

The commission evaluated this rulemaking action and performed a preliminary assessment of whether Texas Government Code, Chapter 2007 is applicable. The adopted action implements legislative requirements in HB 655, which revises the requirements for the commission's regulation of injection wells associated with ASR

projects.

The adopted rule would be neither a statutory nor a constitutional taking of private real property. The adopted rule is procedural and would establish public notice requirements for certain injection well permit applications associated with ASR projects, consistent with the requirements of HB 655 and Texas statutes. The adopted rule does not affect a landowner's rights in private real property because this rulemaking action does not burden (constitutionally), nor restrict or limit, the owner's right to property and reduce its value by 25% or more beyond which would otherwise exist in the absence of the regulations.

Consistency with the Coastal Management Program

The commission reviewed the adopted rule and found that it is neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), nor will it affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the adopted rule is not subject to the Texas Coastal Management Program (CMP).

The commission invited public comment regarding the consistency with the CMP during the public comment period. No comments were received regarding the consistency with the CMP.

Public Comment

The commission held a public hearing on January 22, 2016. The comment period closed on February 8, 2016. The commission received comments from Benbrook; Brazos Valley Groundwater Conservation District (Brazos Valley GWCD); Clearwater Underground Water Conservation District (Clearwater Underground WCD); Hemphill Underground Water Conservation District (Hemphill Underground WCD); High Plains Underground Water Conservation District (High Plains Underground WCD); the Honorable Lyle Larson, Texas State Representative, District 122, who authored HB 655 (Representative Larson); Llano Estacado Underground Water Conservation District (Llano Estacado Underground WCD); Lone Star Groundwater Conservation District (Lone Star GWCD); Mesa Underground Water Conservation District (Mesa Underground WCD); Permian Basin Underground Water Conservation District (Permian Basin Underground WCD); Prairielands GWCD; Sandy Land Underground Water Conservation District (Sandy Land Underground WCD); Sledge Law and Public Strategies (Sledge Law); South Plains Underground Water Conservation District (South Plains Underground WCD); Texas Alliance of Groundwater Districts; Texas Farm Bureau; and the Upper Trinity Groundwater Conservation District (Upper Trinity GWCD).

All commenters generally were in support of the proposed rules, although a common comment was that certain rules were not consistent with HB 655.

Response to Comments

Comment

Hemphill Underground WCD, High Plains Underground WCD, Llano Estacado Underground WCD, Mesa Underground WCD, Permian Basin Underground WCD, Sandy Land Underground WCD, and South Plains Underground WCD supports the proposed language added to §39.651(c)(4); (d)(4) and (6); and (f)(3)(B) with respect to Notice of Receipt of Application and Intent to Obtain a Permit, Notice of Application and Preliminary Decision, and Notice of Contested Case Hearing.

Response

The commission acknowledges the support for the rule as proposed. However, in consideration of comments submitted on the proposed rule as discussed later in this Response to Comments section, the commission is amending §39.651 and adding subsection (h) to specify the public notice requirements for an application for an individual permit for an injection well for an ASR project, consistent with the public notice requirements specified in HB 655 and requirements to maintain an authorized UIC program under the federal Safe Drinking Water Act.

Comment

Prairielands GWCD and Benbrook commented that the proposed notice requirements for ASR projects authorized by individual permits exceed both federal requirements and TWC, §27.153(d) as provided in HB 655. Prairielands GWCD and Benbrook also commented that the notice requirements for individual permits should be revised to exclude requirements that are not mandated by federal requirements or HB 655. Prairielands GWCD commented that requirements for public notice that are more expansive than what is required by the legislature are illogical. Benbrook commented that the proposed notice requirements for individual permit applications are burdensome and not consistent with HB 655. Texas Alliance of Groundwater Districts and Clearwater Underground WCD commented that the notice requirements for an ASR project under an individual permit exceed the requirements established in TWC, §27.153(d) of HB 655. Lone Star GWCD commented that the notice requirements for ASR projects seeking an individual permit are not consistent with the notice requirements in HB 655. Sledge Law commented that requiring mailed notice to individual landowners and mineral interest owners can be onerous and also that the commission should use the specific notice requirements established in HB 655. Texas Alliance of Groundwater Districts and Clearwater Underground WCD questioned whether the cost and extent to which a permit applicant must provide notice under the proposed rule is reasonable. The Upper Trinity GWCD and Representative Larson commented that the proposed notice requirements for ASR projects authorized by an individual permit are inconsistent with the notice requirements provided in HB 655.

Response

The commission regrets any confusion regarding the proposed rule on public notice requirements for ASR projects authorized by an individual permit. The commission had proposed that the requirements for public notice for ASR projects to be authorized by an individual permit in §39.651 be consistent with state statutory requirements, including specific public notice requirements in HB 655 and general requirements applicable to other injection well permit applications. Upon consideration of these comments and as discussed later in this Response to Comments section, the commission is revising §39.651 by creating new subsection (h) to apply the specific public notice requirements for an individual Class V injection well permit application for an ASR project as provided in HB 655 and as required as part of the TCEQ's authorized UIC program under 40 CFR §145.11. The adopted rule will require only one notice of the application, the Notice of Application and Preliminary Decision, which will be mailed after technical review is complete to the groundwater conservation district (GWCD) in which the injection wells will be located, as required by HB 655, and to the persons listed in §39.413(7) - (9), which are the local, state and federal governmental entities for which notice is required under 40 CFR §124.10(c), persons who have requested to be on a mailing list developed

and maintained in accordance with 40 CFR §124.10(c)(1)(ix), and the applicant.

Under the Code Construction Act a later enacted statute generally prevails over an earlier enacted statute that conflicts, and specific statute generally prevails over a general statute that conflicts. Therefore, although there are general notice requirements for an application for an individual UIC permit in TWC, Chapters 5 and 27 that were previously enacted, it is reasonable to interpret HB 655, which specifically addresses notice requirements for ASR projects, as providing the exclusive state notice of application requirements for an individual UIC permit for an ASR project. In addition, a statute should be interpreted so that all words are given effect and meaning. If the general notice requirements for UIC individual permits were applicable, there would have been no need for HB 655 to require that notice be given by first class mail to a GWCD in which the wells will be located, because such notice would have already been required under the general requirements for notice of UIC individual permits in TWC, Chapter 27. Furthermore, if the general statutory requirements for notice were applicable, the requirement in HB 655 that notice be published in a newspaper of general circulation in the county in which the wells are located would be superfluous, because the general requirements for notice of UIC individual

permits, as implemented in commission rule, already require that notice be published in the largest newspaper of general circulation in the county. While HB 655 provides the exclusive state notice of application requirements for an individual UIC permit for an ASR project, additional federal notice requirements must be met in order to meet requirements to maintain an authorized UIC program under the federal Safe Drinking Water Act.

Comment

Brazos Valley GWCD commented that public notice should be provided to GWCDs and adjacent landowners, when the ASR project is authorized under a general permit, individual permit, *or by rule*. Hemphill Underground WCD, High Plains Underground WCD, Llano Estacado Underground WCD, Mesa Underground WCD, Permian Basin Underground WCD, Sandy Land Underground WCD, and South Plains Underground WCD commented that the proposed rule violates the intent of HB 655 because there is no public notice requirement for ASR projects that are authorized by rule. Texas Farm Bureau commented that it expected that all ASR projects would be subject to public notice.

Response

HB 655 does not specify that notice must be provided to adjacent

landowners and does not establish any public notice requirements for ASR projects authorized by rule. Authorization by rule is fulfilled by complying with the requirements of the applicable rules in Chapter 331. Class V injection wells may be authorized by rule under the requirements of the federal Safe Drinking Water Act. ASR projects may be authorized by rule as established in HB 655. There are no public notice requirements in the federal regulations or in state statutes that are applicable to ASR projects authorized by rule. No changes were made directly in response to these comments. However, as noted later in this Response to Comments section, the commission is revising 30 TAC §331.7(h) to require that the executive director inform a GWCD of any ASR project proposed to be authorized by rule for a project that is located within that district. Although the executive director will inform GWCDs of such projects as provided in §331.7, the public notice requirements in §39.651 will not be revised.

Comment

Texas Alliance of Groundwater Districts, Clearwater Underground WCD, Lone Star GWCD, Upper Trinity GWCD, and Representative Larson requested that the rule be amended to require that TCEQ's executive director forward notice to a GWCD for a proposed ASR project authorized by rule that is located within the jurisdiction of the district. Brazos Valley GWCD commented that the rule should be amended to require

TCEQ's executive director to notify GWCDs of any pending ASR project within the district's boundaries. Brazos Valley GWCD and Representative Larson commented that the rule fails to require notice to GWCDs for ASR projects authorized by rule.

Response

The commission expects that ASR project operators will work closely with GWCDs, landowners, and local authorities *before* seeking any requisite approvals from TCEQ. The commission believes that ASR project operators will benefit from information sharing and the coordination in the planning of their projects with these local interests. While HB 655, other state laws, and federal UIC program requirements do not require the provision of public notice for injection wells that are authorized by rule, the commission is revising §331.7(h) to require that the executive director inform a GWCD of any ASR project proposed to be authorized by rule for a project that is located within that district. Although the executive director will inform GWCDs of such projects as provided in §331.7, the public notice requirements in §39.651 will not be revised.

Comment

Hemphill Underground WCD, High Plains Underground WCD, Llano Estacado Underground WCD, Mesa Underground WCD, Permian Basin Underground WCD,

Sandy Land Underground WCD, and South Plains Underground WCD commented that all ASR projects should be required to obtain an individual permit and that authorization by rule should only be used in a dire emergency, such as declared disaster area or systematic drought. Texas Farm Bureau commented that all ASR projects should be authorized by an individual permit so that property owners can participate in the permit process.

Response

HB 655 provided that the commission may authorize the use of a Class V injection well as an ASR injection well by rule, under an individual permit, or under a general permit. Class V injection wells are typically authorized by rule as allowed under federal UIC program requirements and state statute. The commission is not going to require all ASR projects to be authorized by an individual permit at this time. The executive director has the authority in 30 TAC §331.9 to require any operator of an injection well authorized by rule to apply for and obtain an injection well permit. The commission expects that the executive director will exercise this discretion carefully. The commission may decide to re-evaluate the suitability of the authorization by rule process for ASR projects at some future point. No changes were made in response to the comments.

SUBCHAPTER L: PUBLIC NOTICE OF INJECTION WELL AND OTHER SPECIFIC APPLICATIONS
§39.651

Statutory Authority

The amendment is adopted under Texas Water Code (TWC), §5.103, which provides the commission the authority to adopt any rules necessary to carry out its powers and duties under TWC and other laws of this state; TWC, §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; TWC, §5.120, which authorizes the commission to administer the law so as to promote the judicious use and maximum conservation and protection of the environment and natural resources of the state; TWC, §27.019, which requires the commission to adopt rules reasonably required for the regulation of injection wells; and TWC, §27.153, which requires the commission to adopt rules for authorization of aquifer storage and recovery injection wells by rule or by permit.

The adopted amendment implements House Bill 655, 84th Texas Legislature, 2015, and TWC, Chapter 27, Subchapter G.

§39.651. Application for Injection Well Permit.

(a) Applicability. This subchapter applies to applications for injection well permits that are declared administratively complete on or after September 1, 1999.

(b) Preapplication local review committee process. If an applicant decides to participate in a local review committee process under Texas Health and Safety Code, §361.063, the applicant shall submit a notice of intent to file an application to the executive director, setting forth the proposed location and type of facility. The applicant shall mail notice to the county judge of the county in which the facility is to be located. In addition, if the proposed facility is to be located in a municipality or the extraterritorial jurisdiction of a municipality, a copy of the notice must be mailed to the mayor of the municipality.

(c) Notice of Receipt of Application and Intent to Obtain Permit.

(1) On the executive director's receipt of an application, or notice of intent to file an application, the chief clerk shall mail notice to the state senator and representative who represent the area in which the facility is or will be located.

(2) After the executive director determines that the application is administratively complete, notice must be given as required by §39.418 of this title (relating to Notice of Receipt of Application and Intent to Obtain Permit). This notice

must contain the text as required by §39.411(b)(1) - (9) and (11) of this title (relating to Text of Public Notice). Notice under §39.418 of this title will satisfy the notice of receipt of application required by §281.17(d) of this title (relating to Notice of Receipt of Application and Declaration of Administrative Completeness).

(3) After the executive director determines that the application is administratively complete, in addition to the requirements of §39.418 of this title, notice must be given to the School Land Board, if the application will affect lands dedicated to the permanent school fund. The notice must be in the form required by Texas Water Code, §5.115(c).

(4) For Notice of Receipt of Application and Intent to Obtain a Permit concerning Class Ior Class III underground injection wells, the chief clerk shall also mail notice to:

(A) persons who own the property on which the existing or proposed injection well facility is or will be located, if different from the applicant;

(B) landowners adjacent to the property on which the existing or proposed injection well facility is or will be located;

(C) persons who own mineral rights underlying the existing or proposed injection well facility;

(D) persons who own mineral rights underlying the tracts of land adjacent to the property on which the existing or proposed injection well facility is or will be located; and

(E) any groundwater conservation district established in the county in which the existing or proposed injection well facility is or will be located.

(5) The chief clerk or executive director shall also mail a copy of the application or a summary of its contents to the mayor and health authority of a municipality in whose territorial limits or extraterritorial jurisdiction the solid waste facility is located and to the county judge and the health authority of the county in which the facility is located.

(6) For Class I underground injection wells, the published notice must be at least 15 square inches (96.8 square centimeters) with a shortest dimension of at least three inches (7.6 centimeters) and the notice must appear in the section of the newspaper containing state or local news items.

(d) Notice of Application and Preliminary Decision. The notice required by §39.419 of this title (relating to Notice of Application and Preliminary Decision) must be published once under §39.405(f)(2) of this title (relating to General Notice Provisions) after the chief clerk has mailed the preliminary decision and the Notice of Application and Preliminary Decision to the applicant. This notice must contain the text as required by §39.411(c)(1) - (6) of this title. In addition to the requirements of §39.405(h) and §39.419 of this title, the following requirements apply.

(1) The applicant shall publish notice at least once in a newspaper of general circulation in each county that is adjacent or contiguous to each county in which the proposed facility is located. One notice may satisfy the requirements of §39.405(f)(2) of this title and of this subsection, if the newspaper meets the requirements of both rules.

(2) For Class I underground injection wells, the published notice must be at least 15 square inches (96.8 square centimeters) with a shortest dimension of at least three inches (7.6 centimeters) and the notice must appear in the section of the newspaper containing state or local news items.

(3) The chief clerk shall mail notice to the persons listed in §39.413 of this title (relating to Mailed Notice) and to local governments located in the county of the

facility. "Local governments" have the meaning as defined in Texas Water Code, Chapter 26.

(4) For Notice of Application and Preliminary Decision concerning Class Ior Class III underground injection wells, the chief clerk shall also mail notice to:

(A) persons who own the property on which the existing or proposed injection well facility is or will be located, if different from the applicant;

(B) landowners adjacent to the property on which the existing or proposed injection well facility is or will be located;

(C) persons who own mineral rights underlying the existing or proposed injection well facility;

(D) persons who own mineral rights underlying the tracts of land adjacent to the property on which the existing or proposed injection well facility is or will be located; and

(E) any groundwater conservation district established in the county in which the existing or proposed injection well facility is or will be located.

(5) If the application concerns a hazardous waste facility, the applicant shall broadcast notice under §39.503(d)(2) of this title (relating to Application for Industrial or Hazardous Waste Facility Permit).

(6) The deadline for public comments on industrial solid waste, Class III, or Class V injection well permit applications will be not less than 30 days after newspaper publication, and for hazardous waste applications, not less than 45 days after newspaper publication.

(e) Notice of public meeting.

(1) If an application for a new hazardous waste facility is filed:

(A) before September 1, 2005, the agency shall hold a public meeting in the county in which the facility is proposed to be located to receive public comment concerning the application; or

(B) on or after September 1, 2005, the agency:

(i) may hold a public meeting under §55.154 of this title (relating to Public Meetings) in the county in which the facility is proposed to be located to receive public comment concerning the application; but

(ii) shall hold a public meeting under §55.154 of this title in the county in which the facility is proposed to be located to receive public comment concerning the application:

(I) on the request of a member of the legislature who represents the general area in which the facility is proposed to be located; or

(II) if the executive director determines that there is substantial public interest in the proposed facility.

(2) If an application for a major amendment to or a Class 3 modification of an existing hazardous waste facility permit is filed:

(A) before September 1, 2005, the agency shall hold a public meeting in the county in which the facility is located to receive public comment on the application if a person affected files with the chief clerk a request for a public meeting

concerning the application before the deadline to file public comment or to file requests for reconsideration or hearing; or

(B) on or after September 1, 2005, the agency:

(i) may hold a public meeting under §55.154 of this title in the county in which the facility is located to receive public comment on the application; but

(ii) shall hold a public meeting under §55.154 of this title in the county in which the facility is located to receive public comment concerning the application:

(I) on the request of a member of the legislature who represents the general area in which the facility is located; or

(II) if the executive director determines that there is substantial public interest in the facility.

(3) For purposes of this subsection, "substantial public interest" is demonstrated if a request for a public meeting is filed by:

(A) a local governmental entity with jurisdiction over the location in which the facility is located or proposed to be located by formal resolution of the entity's governing body;

(B) a council of governments with jurisdiction over the location in which the facility is located or proposed to be located by formal request of either the council's solid waste advisory committee, executive committee, or governing board;

(C) a homeowners' or property owners' association formally organized or chartered and having at least ten members located in the general area in which the facility is located or proposed to be located; or

(D) a group of ten or more local residents, property owners, or businesses located in the general area in which the facility is located or proposed to be located.

(4) A public meeting is not a contested case proceeding under the Administrative Procedure Act. A public meeting held as part of a local review committee process under subsection (b) of this section meets the requirements of this subsection if public notice is provided in accordance with this subsection.

(5) The applicant shall publish notice of the public meeting once each week during the three weeks preceding a public meeting under §39.405(f)(2) of this title. The published notice must be at least 15 square inches (96.8 square centimeters) with a shortest dimension of at least three inches (7.6 centimeters).

(6) The chief clerk shall mail notice to the persons listed in §39.413 of this title.

(f) Notice of contested case hearing.

(1) Applicability. This subsection applies if an application is referred to the State Office of Administrative Hearings for a contested case hearing under Chapter 80 of this title (relating to Contested Case Hearings).

(2) Newspaper notice.

(A) If the application concerns a facility other than a hazardous waste facility, the applicant shall publish notice at least once in a newspaper of general circulation in the county in which the facility is located and in each county and area that is adjacent or contiguous to each county in which the proposed facility is located.

(B) For Class I underground injection wells, the published notice must be at least 15 square inches (96.8 square centimeters) with a shortest dimension of at least three inches (7.6 centimeters) and the notice must appear in the section of the newspaper containing state or local news items.

(C) If the application concerns a hazardous waste facility, the hearing must include one session held in the county in which the facility is located. The applicant shall publish notice of the hearing once each week during the three weeks preceding the hearing under §39.405(f)(2) of this title. The published notice must be at least 15 square inches (96.8 square centimeters) with a shortest dimension of at least three inches (7.6 centimeters). The notice must appear in the section of the newspaper containing state or local news items. The text of the notice must include the statement that at least one session of the hearing will be held in the county in which the facility is located.

(3) Mailed notice.

(A) For all applications concerning underground injection wells, the chief clerk shall mail notice to persons listed in §39.413 of this title.

(B) For notice of hearings concerning Class Ior Class III underground injection wells, the chief clerk shall also mail notice to:

(i) persons who own the property on which the existing or proposed injection well facility is or will be located, if different from the applicant;

(ii) landowners adjacent to the property on which the existing or proposed injection well facility is or will be located;

(iii) persons who own mineral rights underlying the existing or proposed injection well facility;

(iv) persons who own mineral rights underlying the tracts of land adjacent to the property on which the existing or proposed injection well facility is or will be located; and

(v) any groundwater conservation district established in the county in which the existing or proposed injection well facility is or will be located.

(C) If the applicant proposes a new solid waste management facility, the applicant shall mail notice to each residential or business address, not listed

under subparagraph (A) of this paragraph, located within 1/2 mile of the facility and to each owner of real property located within 1/2 mile of the facility listed in the real property appraisal records of the appraisal district in which the facility is located. The notice must be mailed to the persons listed as owners in the real property appraisal records on the date the application is determined to be administratively complete. The notice must be mailed no more than 45 days and no less than 30 days before the contested case hearing. Within 30 days after the date of mailing, the applicant shall file with the chief clerk an affidavit certifying compliance with its obligations under this subsection. Filing an affidavit certifying facts that constitute compliance with notice requirements creates a rebuttable presumption of compliance with this subparagraph.

(4) Radio broadcast. If the application concerns a hazardous waste facility, the applicant shall broadcast notice under §39.503(d)(2) of this title.

(5) Deadline. Notice under paragraphs (2)(A), (3), and (4) of this subsection must be completed at least 30 days before the contested case hearing.

(g) Approval. All published notices required by this section must be in a form approved by the executive director prior to publication.

(h) Applications for individual Class V injection well permits for aquifer storage and recovery (ASR) projects. Notwithstanding the requirements of subsections (c) and (d) of this section, this subsection establishes the public notice requirements for an application for an individual Class V injection well permit for an ASR project. Issuance of the Notice of Receipt of Application and Intent to Obtain a Permit is not required for an application for an individual Class V injection well permit for an ASR project. The notice required by §39.419 of this title must be published by the applicant once in a newspaper of general circulation in the county in which the injection well will be located after the chief clerk has mailed the preliminary decision and the Notice of Application and Preliminary Decision to the applicant. The chief clerk shall provide notice by first class mail to any groundwater conservation district in which the wells associated with the ASR project will be located. The chief clerk shall also mail notice to the persons listed in §39.413(7) - (9) of this title. This notice must contain the text as required by §39.411(c)(1) - (6) of this title.